



## **SOCIAL SECURITY ADMINISTRATION**

### **20 CFR Parts 404, 408 and 416**

**[Docket No. SSA-2015-0006]**

**RIN 0960-AH78**

### **Prohibiting Persons with Certain Criminal Convictions from Serving as Representative Payees**

**AGENCY:** Social Security Administration.

**ACTION:** Notice of proposed rulemaking.

**SUMMARY:** We propose to amend our regulations to prohibit persons convicted of certain crimes from serving as representative payees under the Social Security Act (Act). We are proposing these revisions because of changes to the Act made by the Strengthening Protections for Social Security Beneficiaries Act of 2018.

**DATES:** Send comments on or before [INSERT DATE 30 DAYS AFTER DATE OF PUBLICATION IN THE *FEDERAL REGISTER*].

**ADDRESSES:** You may submit comments by any one of three methods – Internet, fax, or mail. Do not submit the same comments multiple times or by more than one method. Regardless of which method you choose, please state that your comments refer to Docket No. SSA–2015-0006, so that we may associate your comments with the correct regulation.

**CAUTION:** You should be careful to include in your comments only information that you wish to make publicly available. We strongly urge you not to include in your

comments any personal information, such as Social Security numbers or medical information.

1. Internet: We strongly recommend that you submit your comments via the Internet. Please visit the Federal eRulemaking portal at <http://www.regulations.gov>. Use the Search function to find docket number SSA–2015-0006. The system will issue a tracking number to confirm your submission. You will not be able to view your comment immediately because we must post each comment manually. It may take up to a week for your comment to be viewable.

2. Fax: Fax comments to (410) 966–2830.

3. Mail: Address your comments to the Office of Regulations and Reports Clearance, Social Security Administration, 3100 West High Rise, 6401 Security Boulevard, Baltimore, Maryland 21235–6401.

Comments are available for public viewing on the Federal eRulemaking portal at <http://www.regulations.gov> or in person, during regular business hours, by arranging with the contact person identified below.

**FOR FURTHER INFORMATION CONTACT:** Kevin Salamone, Office of Income Security Programs, Social Security Administration, 6401 Security Boulevard, Baltimore, MD 21235-6401, (410) 966-0854. For information on eligibility or filing for benefits, call our national toll-free number, 1-800-772-1213 or TTY 1-800-325-0778, or visit our Internet site, Social Security Online, at <http://www.socialsecurity.gov>.

## **SUPPLEMENTARY INFORMATION:**

### Background

Social Security's Representative Payment Program provides benefit payment management for our beneficiaries who are incapable of managing their Social Security or Supplemental Security Income (SSI) payments or directing another person to manage those payments due to a mental or physical impairment. Generally, if a beneficiary or recipient is under age 18, we will pay benefits to a representative payee; in certain situations, we make direct payments to a beneficiary under age 18 who shows the ability to manage the benefits. In cases where the beneficiary or recipient is 18 years or older, we select a representative payee if we believe that payment of benefits through a representative payee, rather than direct payment to the beneficiary, will better serve the beneficiary's interest. A representative payee may be an organization, such as a social service agency, or a person, such as a parent, relative, or friend of the beneficiary. We require a representative payee to use benefits in the beneficiary's best interest and, with certain exceptions, to report expenditures to us to ensure the representative payee is using funds appropriately.<sup>1</sup>

When a person or an organization requests to serve as a representative payee, we investigate the potential representative payee to help ensure that the person or

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<sup>1</sup> Payees may receive an annual Representative Payee Report to account for the benefit payments received. Due to Pub. L. 115-165, 132 Stat. 1257, we no longer require the following payees to complete an annual Representative Payee Report: (1) Natural or adoptive parents of a minor child beneficiary who primarily reside in the same household as the child; (2) Legal guardians of a minor child beneficiary who primarily reside in the same household as the child; (3) Natural or adoptive parents of a disabled adult beneficiary who primarily reside in the same household with the beneficiary; and (4) Spouse of a beneficiary.

organization will perform the duties of a representative payee responsibly. We look at factors such as the potential representative payee's relationship to the beneficiary, any past performance as a representative payee for other beneficiaries, and any criminal history.

On April 13, 2018, the President signed into law the Strengthening Protections for Social Security Beneficiaries Act of 2018.<sup>2</sup> Section 202 of this law codifies our current policy, implemented in February 2014, to conduct criminal background checks on representative payee applicants and prohibit the selection of certain representative payee applicants who have a felony conviction of committing, attempting, or conspiring to commit certain crimes. In addition, the legislation requires that we conduct criminal background checks on all currently serving representative payees who do not meet one of the exceptions set out in the law, and continue to do so at least once every five years.<sup>3</sup>

In order to conform our regulations to the new law, we propose, in §§ 404.2020(f) and 416.620(f), to consider the potential representative payee's criminal history when we determine if we should select the individual to serve as a representative payee. As part of our consideration, we will conduct a criminal background check on the representative payee applicant, and if we select the applicant as representative payee, we will conduct a

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<sup>2</sup> Pub. L. 115-165, 132 Stat. 1257.

<sup>3</sup> We may not apply these prohibitions as an absolute bar to serving as a representative payee if the representative payee applicant is the custodial parent of the minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained age 22, custodial spouse of the beneficiary, custodial grandparent of the minor child beneficiary, custodial court-appointed guardian of the beneficiary, parent who was previously the representative payee for his or her minor child who since turned age 18 and continued to be eligible for benefits; or if the representative payee applicant received a Presidential or gubernatorial pardon for the conviction.

criminal background check at least once every five years as provided in proposed §§ 404.2026, 408.626 (by cross reference), and 416.626.

We also propose to add a new paragraph to current §§ 404.2022 and 416.622 of our regulations to reflect the felony prohibitions in the legislation. This new paragraph will explain that we are prohibited from selecting representative payee applicants with a felony conviction of: (1) human trafficking, (2) false imprisonment, (3) kidnapping, (4) rape and sexual assault, (5) first-degree homicide, (6) robbery, (7) fraud to obtain access to government assistance, (8) fraud by scheme, (9) theft of government funds or property, (10) abuse or neglect, (11) forgery, or (12) identity theft.<sup>4</sup> As further provided in proposed §§ 404.2022(f) and 416.622(f), we will also prohibit the selection of a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

We will also apply the background check and prohibitions to representative payee applicants under the Special Veterans Benefits program established by title VIII of the Act and part 408 of our rules. When we consider who may serve as a representative payee under the rules in part 408, we apply the title II rules that we propose to amend here, so those revisions will also apply to representative payee applicants under the Special Veterans Benefits program.<sup>5</sup>

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<sup>4</sup> We recognize that under the laws of the various States, there may be slight differences in the terminology each State uses to identify and define each of the specified crimes. When we finalize these rules, we will provide our adjudicators with State-specific lists of what constitutes the specified crimes.

<sup>5</sup> See 20 CFR 408.620 (applying the rules in 20 CFR 404.2020 to the title VIII program); 20 CFR 408.622 (applying the rules in 20 CFR 404.2022 to the title VIII program); 20 CFR 408.624 (applying the rules in 20 CFR 404.2024 to the title VIII program); and 20 CFR 408.625 (applying the rules in 20 CFR 404.2025 to the title VIII program).

Consistent with our current policy, we are not proposing to apply these prohibitions as an absolute bar to selection for certain representative payee applicants. Instead, we will consider the criminal history of the applicant along with our other evaluation criteria<sup>6</sup> to decide whether to appoint the applicant as a representative payee.

Consistent with the new law, we will not apply the criminal prohibitions as an absolute bar if the representative payee applicant is: the custodial parent of the minor child beneficiary the representative payee applicant seeks to serve; the custodial parent of the disabled beneficiary the representative payee applicant seeks to serve if the beneficiary's disability began before the beneficiary attained age 22; the custodial spouse, custodial grandparent of a minor child, or custodial court-appointed legal guardian of the beneficiary the representative payee applicant seeks to serve (§§ 404.2022(f) and 416.622(f)). We also will not apply the prohibitions as an absolute bar if the representative payee applicant is the parent who was previously the representative payee for his or her minor child who since turned age 18 and continued to be eligible for benefits. (§§ 404.2022(f)(1) and 416.622(f)(1)). Finally, we will not apply the prohibitions as an absolute bar if the representative payee applicant received a Presidential or gubernatorial pardon for the conviction. (§§ 404.2022(f)(3) and 416.622(f)(3)). Instead, we will include the criminal information in our consideration of the best interests of the recipient or beneficiary when we determine whether to select an applicant to serve as a representative payee.

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<sup>6</sup> We consider the following information when selecting an applicant to be a representative payee: (a) the relationship of the applicant to the beneficiary; (b) the amount of interest that the applicant shows in the beneficiary, (c) any legal authority the applicant has to act on behalf of the beneficiary; (d) whether the applicant has custody of the beneficiary; and (e) whether the applicant is in a position to know of and look after the needs of the beneficiary. 20 CFR 404.2020 and 416.620.

We are also correcting an incorrect cross reference in §§ 404.2024(a)(9) and 416.624(a)(9) to §§ 404.2022(e) and 416.622(e) respectively.

## REGULATORY PROCEDURES

### Executive Order 12866 as supplemented by Executive Order 13563

We consulted with OMB and determined that this proposed rule meets the criteria for a significant regulatory action under Executive Order 12866, as supplemented by Executive Order 13563. Thus, OMB reviewed the proposed rule.

### Executive Order 13771

This proposed rule is not subject to the requirements of Executive Order 13771 because it is administrative in nature and results in no more than de minimis costs.

### Regulatory Flexibility Act

We certify that this proposed rule will not have a significant economic impact on a substantial number of small entities because it affects only individuals. Therefore, the Regulatory Flexibility Act, as amended, does not require us to prepare a regulatory flexibility analysis.

### Paperwork Reduction Act

These rules do not create any new or affect any existing collections and, therefore, do not require Office of Management and Budget approval under the Paperwork Reduction Act.

What is our authority to make rules and set procedures for determining whether a person is disabled under the statutory definition?

The Act authorizes us to make rules and regulations and to establish necessary and appropriate procedures to implement them.<sup>7</sup>

(Catalog of Federal Domestic Assistance Program Nos. 96.001, Social Security – Disability Insurance; 96.002, Social Security – Retirement Insurance; 96.004, Social Security – Survivors Insurance; 96.006, Supplemental Security Income; and 96.020 – Special Benefits for Certain World War II Veterans))

## **List of Subjects**

### **20 CFR Part 404**

Administrative practice and procedure, Aged, Blind, Disability benefits, Disability insurance, Old-Age, Survivors, Reporting and recordkeeping requirements, Social security.

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<sup>7</sup> Sections 205(a), 702(a)(5), and 1631(d)(1).



**20 CFR Part 408**

Administrative practice and procedure, Aged, Reporting and recordkeeping requirements, Social security, Supplemental Security Income (SSI), Veterans.

**20 CFR Part 416**

Administrative practice and procedure, Aged, Blind, Disability benefits, Public assistance programs, Reporting and recordkeeping requirements, Supplemental Security Income (SSI).

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Nancy A. Berryhill,  
Acting Commissioner of Social Security.

For the reasons stated in the preamble, we propose to amend 20 CFR chapter III, parts 404, 408, and 416 as set forth below:

**PART 404—FEDERAL OLD-AGE, SURVIVORS AND DISABILITY INSURANCE (1950— )**

**Subpart U — Representative Payment**

1. The authority citation for subpart U of part 404 continues to read as follows:

AUTHORITY: Secs. 205(a), (j), and (k), and 702(a)(5) of the Social Security Act (42 U.S.C. 405(a), (j), and (k), and 902(a)(5)).

2. Amend § 404.2020 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

**§404.2020 Information considered in selecting a representative payee.**

\* \* \* \* \*

(d) Whether the potential payee has custody of the beneficiary;

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary; and

(f) The potential payee's criminal history.

3. Amend § 404.2022 by adding paragraph (f) to read as follows:

**§404.2022 Who may not serve as a representative payee?**

\* \* \* \* \*

(f) Was convicted under Federal or State law of a felony for: human trafficking,

false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best

interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

4. Amend § 404.2024 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

**§404.2024 How do we investigate a representative payee applicant?**

\* \* \* \* \*

(a) \* \* \*

(9) Determine whether the payee applicant is a creditor of the beneficiary (see §404.2022(e)).

(10) Conduct a criminal background check on the payee applicant.

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5. Add § 404.2026 to read as follows:

**§ 404.2026 How do we investigate an appointed representative payee?**

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at

least once every 5 years.

## **PART 408—SPECIAL BENEFITS FOR CERTAIN WORLD WAR II VETERANS**

### **Subpart F — Representative Payment**

6. The authority citation for subpart F of part 408 continues to read as follows:

Authority: Secs. 702(a)(5), 807, and 810 of the Social Security Act (42 U.S.C. 902(a)(5), 1007, and 1010).

7. Add § 408.626 to read as follows:

#### **§ 408.626 How do we investigate an appointed representative payee?**

After we select an individual or organization as your representative payee, we investigate him or her following the rules in §404.2026 of this chapter.

## **PART 416- SUPPLEMENTAL SECURITY INCOME FOR THE AGED, BLIND, AND DISABLED**

### **Subpart F — Representative Payment**

8. The authority citation for subpart F of part 416 continues to read as follows:

AUTHORITY: Secs. 702(a)(5), 1631(a)(2) and (d)(1) of the Social Security Act (42 U.S.C. 902(a)(5) and 1383(a)(2) and (d)(1)).

9. Amend § 416.620 by revising paragraphs (d) and (e) and adding paragraph (f) to read as follows:

#### **§416.620 Information considered in selecting a representative payee.**

\* \* \* \* \*

(d) Whether the potential payee has custody of the beneficiary;

(e) Whether the potential payee is in a position to know of and look after the needs of the beneficiary; and

(f) The potential payee's criminal history.

10. Amend § 416.622 by adding paragraph (f) to read as follows:

**§416.622 Who may not serve as a representative payee?**

\* \* \* \* \*

(f) Was convicted under Federal or State law of a felony for: human trafficking, false imprisonment, kidnapping, rape or sexual assault, first-degree homicide, robbery, fraud to obtain access to government assistance, fraud by scheme, theft of government funds or property, abuse or neglect, forgery, or identity theft or identity fraud. We will also apply this provision to a representative payee applicant with a felony conviction of an attempt to commit any of these crimes or conspiracy to commit any of these crimes.

(1) If the representative payee applicant is the custodial parent of a minor child beneficiary, custodial parent of a beneficiary who is under a disability which began before the beneficiary attained the age of 22, custodial spouse of a beneficiary, custodial court-appointed guardian of a beneficiary, or custodial grandparent of the minor child beneficiary for whom the applicant is applying to serve as representative payee, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this

category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(2) If the representative payee applicant is the parent who was previously the representative payee for his or her minor child who has since turned age 18 and continues to be eligible for benefits, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph, by itself, to prohibit the applicant from serving as a representative payee for that beneficiary. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

(3) If the representative payee applicant received a Presidential or gubernatorial pardon for the relevant conviction, we will not consider the conviction for one of the crimes, or of attempt or conspiracy to commit one of the crimes, listed in this paragraph (f), by itself, to prohibit the applicant from serving as a representative payee. We will consider the criminal history of an applicant in this category, along with the factors in paragraphs (a) through (e) of this section, when we decide whether it is in the best interest of the individual entitled to benefits to appoint the applicant as a representative payee.

11. Amend § 416.624 by revising paragraph (a)(9) and adding paragraph (a)(10) to read as follows:

**§416.624 How do we investigate a representative payee applicant?**

\* \* \* \* \*

(a)\* \* \*

(9) Determine whether the payee applicant is a creditor of the beneficiary (see §404.2022(e)) of this chapter.

(10) Conduct a criminal background check on the payee applicant.

\* \* \* \* \*

12. Add § 416.626 to read as follows:

**§ 416.626 How do we investigate an appointed representative payee?**

After we select an individual or organization to act as your representative payee, we will conduct a criminal background check on the appointed representative payee at least once every 5 years.